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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 FEDERAL TRADE COMMISSION,

No. C 08-00822 SI

9 Plaintiff,

**ORDER DENYING DEFENDANTS'
DISCOVERY REQUEST
[Docket No. 62]**

10 v.

11 MEDLAB INC., et al.,

12 Defendants.
13 _____/

14 Defendants have filed a letter brief seeking sanctions and an order compelling plaintiff to
15 produce a second Rule 30(b)(6) witness. Defendants contend that Dean C. Graybill, plaintiff's
16 designated Rule 30(b)(6) witness, was insufficient because he testified at deposition that he lacked
17 knowledge to testify about various matters.

18 The most obvious problem with defendants' request is that Mr. Graybill's deposition was taken
19 on October 18, 2008, and defendants did not file their letter brief until February 24, 2009, the same day
20 that they filed their opposition to plaintiff's summary judgment motion. The non-expert discovery cut-
21 off in this case was November 14, 2008. Under Civil Local Rule 26-2, "no motions to compel fact
22 discovery may be filed more than 7 court days after the fact discovery cut-off" unless good cause is
23 shown. *See* Civ. Local R. 26-2. Defendants make no effort to explain their lengthy delay in filing their
24 letter brief.


25 In addition, because defendants did not file their request until the same day they filed their
26 opposition to plaintiff's summary judgment motion, granting defendants' request at this juncture would
27 require continuing the summary judgment hearing. Defendants do not attempt to comply with Federal
28 Rule of Civil Procedure 56(f), which requires the party requesting such a continuance to show: "(1) it

1 has set forth in affidavit form the specific facts it hopes to elicit from further discovery; (2) the facts
2 sought exist; and (3) the sought-after facts are essential to oppose summary judgment. Failure to
3 comply with these requirements is a proper ground for denying discovery and proceeding to summary
4 judgment.” *Family Home & Fin. Ctr. Inc. v. Fed. Home Loan Mortgage Corp.*, 525 F.3d 822, 827 (9th
5 Cir. 2008) (internal citation omitted).

6 For these reasons, defendants’ requests for an order and for sanctions are DENIED.

7 **IT IS SO ORDERED.**

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9 Dated: March 9, 2009



SUSAN ILLSTON
United States District Judge